



"Elmer, Mark (ENRD)"
<MElmer@ENRD.USDOJ.GOV>

06/29/2006 11:56 AM

To jfognani@fognanilaw.com
cc "Christen, Corrine (ENRD)"
<CChriste@ENRD.USDOJ.GOV>, Peggy
Livingston/ENF/R8/USEPA/US@EPA,
bcc

Subject RE: Richardson Flat Past Costs

John:

I have added Falconbridge as a party; updated decree generally to refer to Settling Defendants (plural) rather than Settling Defendant; and added a signature page for Falconbridge. I think we just need one authorized signature on behalf of each party. Since you provided me with two names each for Falconbridge and Noranda, I just picked one. If it is more convenient to have the other sign decree, feel free to change the name and title on the signature page to reflect who is actually signing the decree.

I appreciate you making the effort to have faxed signature pages to me by tomorrow morning. Thanks,

Mark

-----Original Message-----

From: jfognani@fognanilaw.com [mailto:jfognani@fognanilaw.com]
Sent: Wednesday, June 28, 2006 4:52 PM
To: Elmer, Mark (ENRD)
Cc: Christen, Corrine (ENRD); livingston.peggy@epa.gov;
soneil@fognanilaw.com
Subject: RE: Richardson Flat Past Costs

Thanks Mark. Let's proceed accordingly. I will call you tomorrow.
John

-----Original Message-----

From: Mark.Elmer@usdoj.gov [mailto:Mark.Elmer@usdoj.gov]
Sent: Wednesday, June 28, 2006 4:27 PM
To: John D. Fognani
Cc: Corrine.Christen@usdoj.gov; livingston.peggy@epa.gov; Sue A. O'Neil;
Mark.Elmer@usdoj.gov
Subject: Re: Richardson Flat Past Costs

I'm out of the office today. But I'm ok naming both Falconbridge and Noranda Mining as long as there is a basis for asserting that Falconbridge has successor liability. Your representation that they do seems like it should be sufficient here, since we are simultaneously settling claim.

When I get back to the office tomorrow, I'll make changes to caption and

signature page to include Falconbridge. It shouldn't take me long, and I'll send it to you as soon as I'm done. If you could have Mr. Hart and Mr. Anderson ready to sign, so that I get faxed signature pages by Friday morning (with originals to follow), I would appreciate it.

If you want to discuss this further, please give me a time tomorrow when I can call you.

Thanks,

Mark

Sent Using U.S. DOJ/ENRD BES Server

-----Original Message-----

From: jfognani@fognanilaw.com <jfognani@fognanilaw.com>
To: Elmer, Mark (ENRD) <MElmer@ENRD.USDOJ.GOV>
CC: soneil@fognanilaw.com <soneil@fognanilaw.com>
Sent: Wed Jun 28 17:56:03 2006
Subject: RE: Richardson Flat Past Costs

Mark -- I just tried to call you to discuss this. Why not just name both entities as Parties in the Consent Decree and the Complaint? It seems to me that would offer the greatest protection especially since I believe the Noranda folks see Falconbridge as having successor liability. Any thoughts? John

-----Original Message-----

From: Mark.Elmer@usdoj.gov [mailto:Mark.Elmer@usdoj.gov]
Sent: Tuesday, June 27, 2006 4:42 PM
To: John D. Fognani
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov; Hernandez.Kathryn@epamail.epa.gov; Corrine.Christen@usdoj.gov; Mark.Elmer@usdoj.gov
Subject: RE: Richardson Flat Past Costs

I thought we had agreed that they would both be considered "Settling Defendants", which would be accomplished by including both within the definition of Settling Defendant. Are you asking that both be Parties to the Decree, so that we would actually name Falconbridge as a Defendant (both in Complaint and Consent Decree)? I frankly haven't considered this, but do you believe Falconbridge has some sort of successor liability for Noranda Mining? If it does not have successor liability, what would be the basis for its liability and, thereby, the basis for a direct claim against it?

Also, can you provide for me the following two pieces of information about Noranda Mining Inc.:

(1) Where is it incorporated? And

(2) Where is its principle place of business.

Thanks.

-----Original Message-----

From: jfognani@fognanilaw.com [mailto:jfognani@fognanilaw.com]
Sent: Tuesday, June 27, 2006 3:54 PM
To: Elmer, Mark (ENRD)
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov;
Hernandez.Kathryn@epamail.epa.gov
Subject: RE: Richardson Flat Past Costs

I thought we had already agreed to have both companies on the Decree.
Please advise if this is not the case. John

-----Original Message-----

From: Mark.Elmer@usdoj.gov [mailto:Mark.Elmer@usdoj.gov]
Sent: Tuesday, June 27, 2006 3:46 PM
To: John D. Fognani
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov;
Hernandez.Kathryn@epamail.epa.gov; Mark.Elmer@usdoj.gov
Subject: RE: Richardson Flat Past Costs

John:

We might be there. If you approve defining "Settling Defendant" to include Falconbridge, as the way of providing protections of decree to Falconbridge, then I think all I need is for you to have either Richard Anderson or David Hart sign decree on behalf of Noranda Mining. If possible, I'd appreciate getting at least the faxed version of your signature page by Friday morning so that I can submit both decrees (yours and United Park/ARCOs) to my management for approval at the same time. I am attaching another copy of CD for your convenience. If this works, please type in the appropriate signing official's name on Noranda Mining's signature page, have that person sign decree, and then fax (by Friday) and mail original to me.

If you believe both Noranda Mining and Falconbridge should be signatories to decree (rather than simply including Falconbridge in definition of Settling Defendant), then we should talk. If this is the case, please call me at your earliest convenience.

Thanks,

Mark

-----Original Message-----

From: jfognani@fognanilaw.com [mailto:jfognani@fognanilaw.com]
Sent: Tuesday, June 27, 2006 3:17 PM

To: Elmer, Mark (ENRD)
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov;
Hernandez.Kathryn@epamail.epa.gov
Subject: RE: Richardson Flat Past Costs

Mark -- What further do you need from our side. I believe I forwarded the names for the signature page and believe we are on target on the other issues we discussed. Let me know. John

-----Original Message-----

From: Mark.Elmer@usdoj.gov [mailto:Mark.Elmer@usdoj.gov]
Sent: Tuesday, June 27, 2006 2:48 PM
To: John D. Fognani
Cc: Livingston.Peggy@epamail.epa.gov; oreilly.maureen@epa.gov;
Mark.Elmer@usdoj.gov; Hernandez.Kathryn@epamail.epa.gov
Subject: Richardson Flat Past Costs

PRIVILEGED AND CONFIDENTIAL
SETTLEMENT COMMUNICATION

John:

I'd like to get this wrapped up this week. I have a signed consent decree from United Park and ARCO, which I plan on submitting to my management for approval no later than this Friday morning. If your client would like to participate in settlement now is the time to do it. After Friday morning, I'll need to reconsider whether to hold open the Government's settlement offer (which as usual is still subject to management approval).

Thanks,

Mark



=152304-v3-richardson_-_past_costs_decree_for_noranda.WPD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

-----X	:	
UNITED STATES OF AMERICA,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	Civil Action No.
	:	
UNITED PARK CITY MINES COMPANY;	:	
ATLANTIC RICHFIELD COMPANY;	:	
NORANDA MINING INC.; and	:	
FALCONBRIDGE LIMITED,	:	
	:	
<i>Defendants.</i>	:	
-----X	:	

PARTIAL CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Richardson Flat Tailings Site located approximately 1.5 miles northeast of Park City, Utah ("the Site").

B. The Defendant that have entered into this Consent Decree (Falconbridge Limited and Noranda Mining Inc. or "Settling Defendant") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. By entering into this Consent Decree, the mutual objective of the Parties is to resolve the claims of the United States against Settling Defendants for Past Response Costs, subject to reservations of rights in Paragraph 14, by allowing Settling Defendants to make a cash payment as described herein.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and Settling Defendants.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through March 1, 2006, plus accrued Interest on all such costs through such date.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

m. "Settling Defendants" shall mean Falconbridge Limited and Noranda Mining Inc., and their respective successors and assigns.

n. "Site" shall mean the Richardson Flat Tailings Site, CERCLIS ID # UTD980952840, which is located approximately 1.5 miles northeast of Park City, Utah and is part of a 650-acre property owned by United Park City Mines Company ("UPCM"). The Site is the location of a mine tailings impoundment that covers approximately 160 acres in the northwest corner of UPCM's property and includes diversion ditches, wetlands and other features. The Site is depicted generally on the map attached as Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to EPA. Within five business days after Settling Defendants receive notice from the United States that this Consent Decree has been lodged, Settling Defendants shall deposit \$60,000 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants. If the Consent Decree is

entered by the Court, Settling Defendants shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 5 and 6 below.

5. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office in the District of Utah following lodging of the Consent Decree.

6. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 0894, DOJ case number 90-11-3-08764, and the civil action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$250 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

Regular Mail: Mellon Bank
EPA Region 8
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail: EPA 360859
Mellon Client Service Center, Room 670
500 Ross Street
Pittsburgh, Pennsylvania 15262-0001

or to such other address as EPA may designate in writing.

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

13. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants or their respective officers, directors, or employees (to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of

their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants (and their respective officers, directors, and employees to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

15. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Utah, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

17. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

18. The waiver in Paragraph 17 shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendants. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

X. RESERVATION OF RIGHTS BY SETTLING DEFENDANTS

19. Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included within the Settling Defendants' Covenant Not to Sue in Paragraph 15.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Except as provided in Paragraph 17, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 17, the Parties expressly reserve any and all rights

(including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs.

22. Settling Defendants agree that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 30 days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 14 days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 14 days of service or receipt of any Motion for Summary Judgment, and within 14 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

XII. RETENTION OF RECORDS

24. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records, reports, or information (hereinafter referred to as “records”) now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

25. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the

subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

26. Settling Defendants each hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site and that they have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

XIII. NOTICES AND SUBMISSIONS

27. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-08764)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Margaret (Peggy) J. Livingston
Senior Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8-ENFL)
Denver, CO 80202-2466

Maureen O'Reilly
EPA Enforcement Specialist
Richardson Flat Superfund Site
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8ENF-RC)
Denver, CO 80202-2466

As to Settling Defendants:

David Hart
Vice President — Reclamation
Noranda Mining Inc.
c/o Noranda Aluminum
P.O. Box 70
New Madrid, MO 63869

With a copy to:

John D. Fognani
Fognani & Faught, PLLC
1700 Lincoln Street, Suite 2222
Denver, CO 80203

XIV. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

29. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding of Defendant with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants

consent to the entry of this Consent Decree without further notice.

31. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

32. The Deputy Section Chief, Environmental Enforcement Section of the United States Department of Justice, and each undersigned representative of a Settling Defendant to this Consent Decree certify that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

33. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

34. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2006.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

FOR THE UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division

Date: _____

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

MARK C. ELMER
Trial Attorney
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Environmental Enforcement Section
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(303) 844-1352 (PHONE)
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**UNITED STATES ATTORNEY'S OFFICE
FOR THE DISTRICT OF UTAH**

STEPHEN J. SORENSON
United States Attorney
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Salt Lake City, UT 84111

Date: _____

DANIEL PRICE
Assistant United States Attorney
District of Utah
185 South State Street, Suite 400
Salt Lake City, UT 84111
(801) 325-3234

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

ROBERT E. ROBERTS
Regional Administrator, Region 8
U.S. Environmental Protection Agency
999 Eighteenth Street, Suite 300
Denver, CO 80202

Date: _____

MARGARET (PEGGY) J. LIVINGSTON
Senior Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8-ENFL)
Denver, CO 80202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

FOR DEFENDANT FALCONBRIDGE LIMITED

Date: _____

Jeffery A. Snow
Senior Vice President and General Counsel
Falconbridge Limited

Agent Authorized to Accept Service on Behalf of Above-signed Party:

John D. Fognani
Fognani & Faught, PLLC
1700 Lincoln Street, Suite 2222
Denver, CO 80203

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

FOR DEFENDANT NORANDA MINING INC.

Date: _____

David Hart
Vice President — Reclamation
Noranda Mining Inc.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

John D. Fognani
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1700 Lincoln Street, Suite 2222
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